

THEODORA LEE, CA Bar No. 129892  
tlee@littler.com  
CONSTANCE E. NORTON, CA Bar No. 146365  
cnorton@littler.com  
JOHN S. HONG, CA Bar No. 255150  
jhong@littler.com  
LITTLER MENDELSON, P.C.  
650 California Street  
20th Floor  
San Francisco, California 94108.2693  
Telephone: 415.433.1940  
Fax No.: 415.399.8490

Attorneys for Defendant  
FIRST TRANSIT, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ADRIENNE HUDSON, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

FIRST TRANSIT, INC.,

Defendant.

Case No. C10-03158 WHA

**DEFENDANT FIRST TRANSIT, INC.'S  
ANSWER TO PLAINTIFF'S COMPLAINT**

**JURY TRIAL DEMANDED**

Complaint Filed: July 20, 2010

Defendant FIRST TRANSIT, INC. ("Defendant"), through the undersigned counsel, hereby answers the Class Action Complaint ("Complaint") filed by Plaintiff ADRIENNE HUDSON, individually and on behalf of all others similarly situated ("Plaintiff"). All allegations not specifically admitted in this Answer are denied. In response to the allegations contained in the separately numbered paragraphs of the Complaint, Defendant states as follows:

**RESPONSE TO INTRODUCTORY ALLEGATIONS**

1. Answering Paragraph 1 of the Complaint, Defendant admits that Plaintiff purports to assert claims pursuant to the statutes and theories alleged therein, but denies that Plaintiff, the Class and/or Subclass(es) she purports to represent, have any valid claims against Defendant under those or any other statutes or theories. Defendant further denies that it has a policy or practice that has an adverse impact on African American and/or Latinos, or that any of its policies

DEFENDANT'S ANSWER TO  
COMPLAINT; JURY TRIAL DEMANDED

(NO. C10-03158 WHA)

1 or practices are not job-related nor justified by business necessity. Except as so expressly admitted  
 2 and with regard to any and all remaining allegations in Paragraph 1, Defendant denies each and  
 3 every remaining allegation contained therein.

4 2. Answering Paragraph 2 of the Complaint, Defendant admits that Plaintiff  
 5 purports to assert an entitlement to the remedies set forth therein, but denies that Plaintiff, the Class  
 6 and/or or Subclass(es) she purports to represent, have any valid claims against Defendant for those  
 7 or any other remedies. Except as so expressly admitted and with regard to any and all remaining  
 8 allegations in Paragraph 2, Defendant denies each and every remaining allegation contained therein.

### 9 **RESPONSE TO PARTY ALLEGATIONS**

10 3. Answering Paragraph 3 of the Complaint, Defendant lacks knowledge or  
 11 information sufficient to form a belief as to the truth of the allegations asserted and on that basis  
 12 denies each and every allegation contained therein.

13 4. Answering Paragraph 4 of the Complaint, Defendant admits the allegations  
 14 contained therein.

15 5. Answering Paragraph 5 of the Complaint, Defendant admits that it is a  
 16 national transportation company. Defendant further admits that it states on its website that it is the  
 17 nation's leading bus transportation provider. Except as so expressly admitted and with regard to any  
 18 and all remaining allegations in Paragraph 5, Defendant denies each and every remaining allegation  
 19 contained therein.

20 6. Answering Paragraph 6 of the Complaint, Defendant admits that its website  
 21 states, amongst other things, that in 2007 it operated in 41 states and had 15,500 employees. Except  
 22 as so expressly admitted and with regard to any and all remaining allegations in Paragraph 6,  
 23 Defendant denies each and every remaining allegation contained therein.

24 7. Answering Paragraph 7 of the Complaint, Defendant admits the allegations  
 25 contained therein.

### 26 **RESPONSE TO JURISDICTION AND VENUE ALLEGATIONS**

27 8. Answering Paragraph 8 of the Complaint, Defendant admits that Plaintiff  
 28 purports to invoke the jurisdiction and supplemental jurisdiction of this Court and to assert claims

1 pursuant to the statutes and theories alleged therein, but denies that Plaintiff has any valid claims  
2 against Defendant under those or any other statutes or theories. Except as so expressly admitted and  
3 with regard to any and all remaining allegations in Paragraph 8, Defendant denies each and every  
4 remaining allegation contained therein.

5           9. Answering Paragraph 9 of the Complaint, Defendant admits that venue in this  
6 Court is proper. Defendant further admits that it made a conditional offer of employment to  
7 Plaintiff, which was rescinded when Plaintiff failed to meet the requisite conditions of the offer.  
8 Except as so expressly admitted and with regard to any and all remaining allegations in Paragraph 9,  
9 Defendant denies each and every remaining allegation contained therein.

10           10. Answering Paragraph 10 of the Complaint, Defendant admits that venue in  
11 this Court is proper. Defendant further admits that it made a conditional offer of employment to  
12 Plaintiff, which was rescinded when Plaintiff failed to meet the requisite conditions of the offer.  
13 Except as so expressly admitted and with regard to any and all remaining allegations in Paragraph  
14 10, Defendant denies each and every remaining allegation contained therein.

15                           **RESPONSE TO BACKGROUND ALLEGATIONS**

16           11. Answering Paragraph 11 of the Complaint, Defendant lacks knowledge or  
17 information sufficient to form a belief as to the truth of the allegations asserted and on that basis  
18 denies each and every allegation contained therein.

19           12. Answering Paragraph 12 of the Complaint, Defendant denies that its  
20 employment selection policies or practices have a disparate impact on African-American and/or  
21 Latino job applicants and employees. With respect to the remaining allegations of Paragraph 12 of  
22 the Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth  
23 of the allegations asserted and on that basis denies each and every remaining allegation contained  
24 therein.

25           13. Answering Paragraph 13 of the Complaint, Defendant asserts that the United  
26 States Equal Employment Opportunity Commission (“EEOC”) policy guidance provisions quoted  
27 therein speak for themselves. Except as so expressly admitted and with regard to any and all  
28

1 remaining allegations in Paragraph 13, Defendant denies each and every remaining allegation  
2 contained therein.

### 3 **RESPONSE TO PLAINTIFF'S ALLEGATIONS**

4 14. Answering Paragraph 14 of the Complaint, Defendant lacks knowledge or  
5 information sufficient to form a belief as to the truth of the allegations asserted and on that basis  
6 denies each and every allegation contained therein.

7 15. Answering Paragraph 15 of the Complaint, Defendant lacks knowledge or  
8 information sufficient to form a belief as to the truth of the allegations asserted and on that basis  
9 denies each and every allegation contained therein.

10 16. Answering Paragraph 16 of the Complaint, Defendant lacks knowledge or  
11 information sufficient to form a belief as to the truth of the allegations asserted and on that basis  
12 denies each and every allegation contained therein.

13 17. Answering Paragraph 17 of the Complaint, Defendant admits that in early  
14 March 2009, First Transit offered Plaintiff employment conditioned, *inter alia*, on the results of a  
15 background check and accepted her into its training program. Defendant denies that Plaintiff applied  
16 for a paratransit bus driver job with First Transit in February 2009. Defendant is without sufficient  
17 knowledge or information to form a belief as to the truth of the allegation that Plaintiff left her  
18 employment with MV Transportation in March 2009 to accept First Transit's offer of employment,  
19 and on that basis denies that allegation. Except as so expressly admitted and with regard to any and  
20 all remaining allegations in Paragraph 17, Defendant denies each and every remaining allegation  
21 contained therein.

22 18. Answering Paragraph 18 of the Complaint, Defendant admits that on or about  
23 March 20, 2009, it rescinded Plaintiff's conditional offer of employment because Plaintiff failed to  
24 meet the requisite conditions of the offer. Except as so expressly admitted and with regard to any  
25 and all remaining allegations in Paragraph 18, Defendant denies each and every allegation contained  
26 therein.

27 19. Answering Paragraph 19 of the Complaint, Defendant admits that Plaintiff  
28 represented that her 2002 welfare fraud conviction had been dismissed pursuant to California Penal

DEFENDANT'S ANSWER TO  
COMPLAINT; JURY TRIAL DEMANDED

1 Code section 1203.4. Defendant further admits that on or about March 20, 2009, it rescinded  
 2 Plaintiff's conditional offer of employment because Plaintiff failed to meet the requisite conditions  
 3 of the offer. Except as so expressly admitted and with regard to any and all remaining allegations in  
 4 Paragraph 19, Defendant denies each and every allegation contained therein.

5 20. Answering Paragraph 20 of the Complaint, Defendant admits that in or about  
 6 March 2009, it maintained standards with respect to criminal background checks for hiring and  
 7 continued employment. Except as so expressly admitted and with regard to any and all remaining  
 8 allegations in Paragraph 20, Defendant denies each and every remaining allegation contained  
 9 therein.

10 21. Answering Paragraph 21 of the Complaint, Defendant denies each and every  
 11 allegation contained therein.

12 22. Answering Paragraph 22 of the Complaint, Defendant lacks knowledge or  
 13 information sufficient to form a belief as to Plaintiff's current desire to work for Defendant.  
 14 Defendant denies that its standards for criminal background checks for hiring and continued  
 15 employment are unlawful. Except as so expressly admitted and with regard to any and all remaining  
 16 allegations in Paragraph 22, Defendant denies each and every remaining allegation contained  
 17 therein.

#### 18 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19 23. Answering Paragraph 23 of the Complaint, Defendant admits that on or about  
 20 November 10, 2009, Plaintiff filed a Charge of Discrimination with the EEOC, a copy of which is  
 21 attached to the Complaint as Exhibit 1. Defendant further admits that a copy of a Notice of Right to  
 22 Sue, issued to Plaintiff on or about June 1, 2009 regarding EEOC Charge No. 555-2010-00159 is  
 23 attached to the Complaint as Exhibit 2. Defendant further admits that a Notice to Complainant of  
 24 Right-To-Sue issued to Plaintiff by DFEH on or about December 17, 2009, regarding EEOC Charge  
 25 No. 555-2010-00159 is attached to the Complaint as Exhibit 3. Defendant lacks knowledge or  
 26 information sufficient to form a belief as to the truth of the remaining allegations contained in  
 27 Paragraph 23 and on that basis denies each and every remaining allegation contained therein.  
 28

**RESPONSE TO CLASS ACTION ALLEGATIONS**

24. Answering Paragraph 24 of the Complaint, Defendant admits that Plaintiff purports to assert class claims pursuant to the rules of federal civil procedure alleged therein, but denies that Plaintiff can maintain a class action against Defendant under those or any other rules. Except as so expressly admitted and with regard to any and all remaining allegations in Paragraph 24, Defendant denies each and every remaining allegation contained therein.

25. Answering Paragraph 25 of the Complaint, Defendant denies each and every allegation contained therein.

26. Answering Paragraph 26 of the Complaint, Defendant denies each and every allegation contained therein.

27. Numerosity: Answering Paragraph 27 of the Complaint, Defendant admits that it employs more than 15,000 individuals in the United States and that it maintains branches throughout the State of California. Except as so expressly admitted and with regard to any and all remaining allegations in Paragraph 27, Defendant denies each and every remaining allegation contained therein.

28. Commonality: Answering Paragraph 28 of the Complaint, Defendant denies each and every allegation contained therein.

29. Typicality: Answering Paragraph 29 of the Complaint, Defendant denies each and every allegation contained therein.

30. Adequacy: Answering Paragraph 30 of the Complaint, Defendant denies each and every allegation in contained therein.

31. Case Maintainable Under This Rule: Answering Paragraph 31 of the Complaint, Defendant denies each and every allegation contained therein.

///

///

///

///

///

**RESPONSE TO CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**Title VII of the Civil Rights Act**

**(42 U.S.C. § 2000e-2(k))**

32. The allegations in Paragraph 32 contain statements to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 32.

33. Answering Paragraph 33 of the Complaint, Defendant denies each and every allegation contained therein.

34. Answering Paragraph 34 of the Complaint, Defendant denies each and every allegation contained therein.

35. Answering Paragraph 35 of the Complaint, Defendant denies each and every allegation contained therein.

36. Answering Paragraph 36 of the Complaint, Defendant denies each and every allegation contained therein.

37. Answering Paragraph 37 of the Complaint, Defendant does not contest that Plaintiff requests relief from this Court, but denies that Defendant violated rights that are secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e, *et seq.*, as amended by the Civil Rights Act of 1991 ("Title VII"), of Plaintiff, or of any Class and/or Subclass(es) member she purports to represent.

**SECOND CAUSE OF ACTION**

**California Fair Employment and Housing Act**

**(Cal. Gov. Code § 12940(a))**

38. The allegations in Paragraph 38 contain statements to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 38.

39. Answering Paragraph 39 of the Complaint, Defendant denies each and every allegation contained therein.

41. Answering Paragraph 41 of the Complaint, Defendant does not contest that Plaintiff requests relief from this Court, but denies that Defendant violated rights that are secured by FEHA, of Plaintiff or any Class and/or Subclass(es) member she purports to represent.

**(California Business & Professions Code § 17200, *et seq.*)**

45. Answering Paragraph 45 of the Complaint, Defendant does not contest that Plaintiff requests relief from this Court, but denies that Defendant violated rights that are secured by California's Unfair Competition Law, of Plaintiff or of any Class and/or Subclass(es) member she purports to represent.

In response to Plaintiff's various Prayers for Relief, Defendant denies that Plaintiff, individually or on behalf of any Class and/or Subclass(es) she purports to represent, is entitled to any type of relief, including equitable monetary relief in the form of back and front pay, restitution, injunctive relief, adverse judgment, interest, or attorneys' fees, costs and expenses. Defendant further denies that the proposed Class and/or Subclass(es) are appropriate for class action treatment under Rule 23 or that Plaintiff or her attorneys are proper representatives of the proposed Class and/or Subclass(es).



1 **AFFIRMATIVE DEFENSES**

2 By way of separate, additional and/or affirmative defenses to the Complaint and each  
3 claim therein, and without conceding that Defendant bears the burden of proof or the burden of  
4 persuasion as to any of these issues, Defendant alleges as follows:

5 **FIRST AFFIRMATIVE DEFENSE**

6 The Complaint and each cause of action set forth therein fail to state sufficient facts  
7 to constitute a cause of action.

8 **SECOND AFFIRMATIVE DEFENSE**

9 Plaintiff's claims are barred by the applicable statute of limitations to the extent that  
10 Plaintiff, or any member of the Class and/or Subclass(es) she purports to represent, seeks to recover  
11 for any wages allegedly earned or due more than three years before the filing of this action, pursuant  
12 to California Code of Civil Procedure section 338(a).

13 **THIRD AFFIRMATIVE DEFENSE**

14 Plaintiff's Complaint, and claims made in the cause of action for alleged violation of  
15 California Business and Professions Code Section 17200 *et seq.*, are barred, in whole or in part, by  
16 the statute of limitations in California Business and Professions Code Section 17208.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 Defendant is informed and believes that a reasonable opportunity for investigation  
19 and discovery will reveal, and on that basis alleges, that the Complaint, and each cause of action set  
20 forth therein, is barred by the equitable doctrine of unclean hands.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 Defendant is informed and believes that a reasonable opportunity for investigation  
23 and discovery will reveal, and on that basis alleges, that the Complaint, and each cause of action set  
24 forth therein, is barred by the equitable doctrine of waiver.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 Defendant is informed and believes that a reasonable opportunity for investigation  
27 and discovery will reveal, and on that basis alleges, that the Complaint, and each cause of action set  
28 forth therein, is barred by the equitable doctrine of laches.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's employment was governed by California Labor Code section 2922 and therefore she could be terminated with or without notice and/or cause.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff lacks standing to bring the claims asserted herein both individually and/or as a representative of the proposed Class and/or Subclass(es).

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's Complaint, and each cause of action therein, fails to state a cognizable class under Rule 23 of the Federal Rules of Civil Procedure, Section 382 of the California Rules of Civil Procedure, or any other applicable rule or law regulating the maintenance of class actions, in that Plaintiff fails to establish the requisite numerosity, commonality, typicality of claims and defenses, and fails to establish her representative status and/or standing. Moreover, Plaintiff has not shown and cannot show that class treatment of the purported causes of action in her Complaint is superior to other methods of adjudicating the controversy or that this action should proceed as a purported class, since difficulties likely to be encountered will render the action unmanageable.

**TENTH AFFIRMATIVE DEFENSE**

Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that Plaintiff is not an adequate representative of, and has conflicting interests with, the purported Class and Subclass(es) she seeks to represent.

**ELEVENTH AFFIRMATIVE DEFENSE**

Certification of a Class and/or Subclass(es), and/or prosecution of Plaintiff's claims as a class action, as applied to the facts and circumstances of this case, would constitute a denial of Defendant's due process rights under the United States and California Constitutions.

**TWELFTH AFFIRMATIVE DEFENSE**

Adjudication of the claims of the alleged putative class through generalized class-wide proof would violate Defendant's right to trial by jury under the United States and California Constitutions.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Defendant opposes class certification and disputes the propriety of class action treatment. Should the Court certify a Class and/or Subclass(es) over Defendant's objections, then Defendant asserts each distinct defense set forth herein as against each and every member of the certified Class and/or Subclass(es).

**FOURTEENTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff's Complaint contains allegations that are beyond the scope of Plaintiff's administrative charge of discrimination, said allegations must be dismissed.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The employment decision(s) about which Plaintiff complains were based upon legitimate, non-discriminatory factors.

**SIXTEENTH AFFIRMATIVE DEFENSE**

To the extent the Complaint alleges wrongful acts or omissions by agents or employees of Defendant, any such wrongful acts were committed outside the course and scope of any such agency or employment.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Defendant had no knowledge of any discriminatory or otherwise unlawful behavior by any of its employees, agents, or representatives.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

To the extent that any acts and practices are alleged by Plaintiff to have had a discriminatory disparate impact on her, or upon any proposed member of the Class and/or Subclass(es) she purports to represent, such acts and practices were performed and implemented in good faith and consistent with business necessity, and are permitted on the grounds of business justification.

**NINETEENTH AFFIRMATIVE DEFENSE**

To the extent any decisions or actions are alleged to be the result of discrimination and disparate treatment, the same decisions or actions would have been made or taken with or without any consideration of any allegedly discriminatory factor.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff's discrimination claims are barred in whole or in part, or fail as a matter of law, because Plaintiff suffered no cognizable discrimination on the basis of, or because of, any protected trait.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

The actions taken by Defendant, or anyone acting on its behalf, if any, were for lawful and legitimate, nondiscriminatory business reasons, made in good faith.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

The Complaint, and each cause of action set forth therein, is barred because Defendant's conduct is protected by the managerial privilege and/or that all actions taken with respect to Plaintiff, or any member of the Class and/or Subclass(es) she purports to represent, were undertaken and exercised with proper managerial discretion, with good cause, and for proper, lawful reasons.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

The Complaint is barred in that, at all relevant times, Defendant acted reasonably, with a good faith belief in the legality of its actions, based upon the relevant facts and circumstances known to it at the time it acted.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

The alleged acts that form the basis of Plaintiff's Complaint were done, if at all, in good faith, honestly, and without malice and did not violate any rights that Plaintiff, or any member of the Class and/or Subclass(es) she purports to represent, may have under federal, state or local laws, rules, regulations or guidelines.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for violation of California Business and Professions Code section 17200, *et seq.* is barred because Defendant's business actions or practices were not "unfair," "unlawful," "harmful," "deceptive," or "fraudulent" within the meaning of California Business and Professions Code section 17200, *et seq.*

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's cause of action under California's Unfair Competition Law does not constitute a proper representative action.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims, and those of the members of the putative Class and/or Subclass(es) she purports to represent, under California's Unfair Competition Law are not manageable.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims, and those of the members of the putative Class and/or Subclass(es) she purports to represent, that Defendant violated California's Unfair Competition Law are barred, in whole or in part, because Plaintiff alleges injuries that were not proximately caused by any unlawful policy, custom, practice and/or procedure promulgated and/or tolerated by Defendant and, to the extent any such practice was engaged in, which Defendant denies, such practice is not continuing.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims, and those of the members of the putative Class and/or Subclass(es) she purports to represent, that Defendant violated California's Unfair Competition Law, entitling Plaintiff to the remedy of restitution remedies, or any other equitable relief prayed for, are barred, in whole or in part, because Plaintiff and the members of the putative Class and/or Subclass(es) she purports to represent, have an adequate remedy at law.

**THIRTIETH AFFIRMATIVE DEFENSE**

Plaintiff's prayers for restitution, disgorgement, or injunctive relief under California's Business and Professions Code Section 17200, *et seq.* are barred with respect to any alleged violations that have discontinued, ceased or are not likely to recur.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

Prosecution of this action by Plaintiff as a representative of the general public under California Business and Professions Code section 17200, *et seq.*, as applied to the facts and circumstances of this case, would constitute a denial of Defendant's substantive and procedural due process rights under the Fourteenth Amendment of the United States Constitution.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

Without admitting any liability whatsoever, Defendant asserts that any recovery by Plaintiff, and/or any member of the putative Class and/or Subclass(es) she purports to represent, must be limited in whole or in part by their failure and/or refusal to mitigate their purported damages, if any.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

The Complaint fails to properly state a claim upon which prejudgment interest may be awarded, as the damages claimed are not sufficiently certain to allow an award of prejudgment interest.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover attorneys' fees or costs from Defendant as the Complaint will not cause any change in conduct, policy or procedure, and Plaintiff cannot establish that Defendant violated any statute entitling Plaintiff to an award of attorneys' fees or costs. Alternatively, such an award should be barred or reduced to the extent such fees or costs were not reasonably incurred, were incurred at an excessive rate, or were incurred with respect to others' fault.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for compensatory damages are limited by the damages' cap imposed by Title VII.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state facts sufficient to constitute a claim for which attorneys' fees and costs may be awarded.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that Defendant shall be entitled to an offset against any relief due Plaintiff, and the Class and/or Subclass(es) she purports to represent, based upon their respective wrongful conduct.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part, or fail as a matter of law, to the extent Defendant is contractually bound to maintain any policy and/or practice about which Plaintiff complains.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

Because, *inter alia*, Plaintiff's Complaint is couched in conclusory terms, Defendant cannot fully anticipate all the affirmative defenses that may be applicable to this case. Accordingly, Defendant respectfully reserves the right to amend its Answer to add any applicable defenses revealed during any later proceedings in this case. Further, Defendant respectfully reserves the right to amend its Answer to account for any new statutory or decisional law that arises during the pendency of this action.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff and the Class and/or Subclass(es) she purports to represent take nothing by reason of the Complaint;
2. That judgment be entered on the Complaint in favor of Defendant and against Plaintiff and the Class and/or Subclass(es) she purports to represent on all causes of action, and that the Complaint be dismissed with prejudice;
3. That Defendant be awarded its attorneys' fees and costs of suit incurred herein; and
4. For such other and further relief as the Court may deem just and proper.

Dated: September 20, 2010

/S/

THEODORA R. LEE  
 CONSTANCE E. NORTON  
 JOHN S. HONG  
 LITTLER MENDELSON, P.C.  
 Attorneys for Defendant  
 FIRST TRANSIT, INC.

**JURY TRIAL DEMAND**

Defendant First Transit, Inc. hereby demands a trial by jury on all issues so triable.

Dated: September 20, 2010

/S/

THEODORA R. LEE  
CONSTANCE E. NORTON  
JOHN S. HONG  
LITTLER MENDELSON, P.C.  
Attorneys for Defendant  
FIRST TRANSIT, INC.

Firmwide:97518431.1 063012.1026



**CERTIFICATE/PROOF OF SERVICE**

I am employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 650 California Street, 20<sup>th</sup> Floor, San Francisco, California 94108. On September 20, 2010, I caused the following documents:

**DEFENDANT FIRST TRANSIT, INC.'S - ANSWER TO PLAINTIFF'S  
COMPLAINT; JURY TRIAL DEMANDED**

to be electronically filed with the Clerk of the Court through the Court's CM/ECF system. It is my understanding that the CM/ECF system will automatically send a "Notice of Electronic Filing" to the registered users in the case and that the "Notice of Electronic Filing" will constitute service of the above-listed document(s) on the following:

Matthew J. Piers, Esq.  
mpiers@hsplegal.com  
Kalman D. Resnick, Esq.  
kresnick@hsplegal.com  
Christopher J. Wilmes, Esq.  
cwilmes@hsplegal.com  
HUGHES SOCOL PIERS RESNICK & DYM  
70 W. Madison Street, Suite 4000  
Chicago, IL 60602  
Tel: 312.580.0100  
Fax: 312.580.1994

*Attorneys for Plaintiff*

Madeline Neighly, Esq.  
mneighly@nelp.org  
National Employment Law Project  
405 – 14<sup>th</sup> Street, Suite 1400  
Oakland, California 94612  
Tel: 510.663.5707  
Fax: 510.663.2028

*Attorneys for Plaintiff*

Teresa Demchak, Esq.  
tdemchak@gdblegal.com  
Roberta Steele, Esq.  
rsteele@gdblegal.com  
James Kan, Esq.  
jkan@gdblegal.com  
GOLDSTEIN, DEMCHAK, BALLER,  
BORGES & DARDARIAN  
300 Lakeside Drive, Suite 1000  
Oakland, California 94612  
Tel: 510.763.9800  
Fax: 510.835.1417

*Attorneys for Plaintiff*

Executed on September 20, 2010, at San Francisco, California.

/S/  
KAREN D. DAVIS